

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P.No. 8621 of 2005

Date of decision: October 28, 2006

Punjab State Agricultural Marketing Board and another

v.

**Additional Secretary to Govt. of Punjab, Department of Agriculture,
Civil Secretariat, Punjab, Chandigarh and another.**

Present: Mr.S.P.Garg, Advocate for the petitioners.

Mr.S.K.Pipat, Senior Advocate with
Mr.Ramanjit Singh, Advocate for respondent No.2.

CORAM:

Hon'ble Mr.Justice Adarsh Kumar Goel

Hon'ble Mr. Justice Rajesh Bindal

1. Whether Reporters of local papers maybe allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Rajesh Bindal, J.

The petitioners have approached this Court by filing the present petition, challenging order dated 11.10.2004 (Annexure P.3), passed by the Additional Secretary to Govt. of Punjab, Department of Agriculture, Punjab (hereinafter described as 'the revisional authority'), in a revision filed by respondent No.2- M/s Shree Ram Roller Flour Mills against the order passed by the Secretary, Punjab Mandi Board (hereinafter described as 'the appellate authority'), whereby the appeal of respondent No.2 was rejected.

Briefly, the facts, as pleaded in the petition, are that respondent No.2 is a licensee firm, who deals in the sale, purchase, storage and processing of agricultural produce in the notified market area in Jagraon (hereinafter described as 'the local market area'), where respondent No.2 has set up a flour mill. During the course of its business, respondent No.2 makes purchase of wheat from the local

market area and also from other Mandis in the State of Punjab as well as outside the State of Punjab. During the years 1998-99 and 1999-2000, respondent No.2 purchased wheat from local market area and also other notified market areas, such as Bathinda, Goniana and Abohar. Whereas respondent No.2 paid market fee and Rural Development Fund (for short, 'RDF') for the purchase of wheat from the local market area, exemption was claimed, by submitting KK forms, from payment of market fee and RDF with regard to the purchases of wheat from market areas other than the local market area. It is further pleaded in the petition that when KK forms were sent for verification, the same were rejected by the concerned Market Committee by stating that no market fee and RDF has been deposited on the transactions recorded on the KK forms. On receipt of such information, assessment proceedings were initiated against respondent No.2 and in the process, KK forms submitted by respondent No.2 were rejected and demand of market fee and RDF was raised. Penalty as well as interest were also levied.

In appeal before the appellate authority, respondent No.2 failed. Still aggrieved, respondent No.2 invoked the revisional jurisdiction under the Punjab Agricultural Produce Marketsw Act, 1961 (for short, 'the Act'), where respondent No.2 succeeded. As the demand of market fee was set aside by the revisional authority, setting aside of penalty and interest were consequential. It is this order of the revisional authority, which has been challenged by the petitioners before this Court.

We have heard Mr. S. P. Garg, learned counsel appearing for the petitioners and Mr. S. K. Pipat, learned senior counsel appearing for respondent No.2 and perused the record.

The only contention raised by learned counsel for the petitioners is that once respondent No.2 had brought wheat, which was purchased by him from the market areas, other than the local market area, he was required to furnish statutory KK forms for seeking exemption from payment of market fee on the

wheat brought into the local market area and as the KK forms submitted by respondent No.2 were not found to be containing true and correct particulars, the same were accordingly rejected and the demand of market fee was rightly raised against respondent No.2. As he had tried to evade market fee/ RDF in connivance with the dealers situated outside the local market area, interest and penalty were also rightly levied. The revisional authority, without examining the facts of the case in its true letter and spirit, had exceeded its jurisdiction in setting aside the demand against respondent No.2. Once it is found by the appellate authority that the details furnished in KK forms regarding payment of market fee in the respective market areas from where the wheat had been purchased by respondent No.2, were false, the liability to pay market fee would fall on respondent No.2.

On the other hand, learned senior counsel appearing for respondent No.2 controverted the contentions raised on behalf of the petitioners by submitting that the revisional authority has rightly set aside the orders passed by the Assessing Officer as well as the appellate authority, as the same were passed on wrong premises. The liability to pay market fee shall be of the buyer and if he is not a licensee in the market area, then the seller is to realise the same from the buyer and pay it to the market committee. According to the learned senior counsel, respondent No.2, in the present case, though was a buyer but was not a licensee in the market areas from where he had brought the wheat for processing in the local market area and that being the situation, the liability to pay market fee on the transactions was on the licensees in the respective market areas, i.e., the sellers there and not on respondent No.2. It is further submitted that the petitioners had in fact, paid the market fee on the transactions having taken place in the other market areas to the sellers there and this fact is fortified from KK forms issued by them to respondent No.2, even mentioning the onward payment of market fee to the market committees concerned. In case, the licensees in their respective market areas had not discharged their liability to pay the market fee, respondent No.2

cannot be faulted and fastened with the liability. In fact, the Market Committees, where the actual transactions had taken place, had failed to discharge their duty by not recovering the market fee and RDF from those licensees and are unnecessarily harassing respondent No.2. It is further submitted that respondent No.2 was not even required to furnish statutory KK forms as no transaction of sale or purchase had taken place within the local market area which is *sine qua non* for levy of market fee and RDF. In the end, learned senior counsel referred to and relied upon the findings recorded by the revisional authority, which are extracted below, and prayed for dismissal of the writ petition. Relevant findings from the order of the revisional authority are as under:

“ The above provisions show that the Market Committee can levy market fee in its notified market area under Section 23 of the Act at a rate not exceeding two rupees for every one hundred rupees on agricultural produce bought or sold by a licensee in the said area of committee. Therefore, two conditions are necessary for levy of fee in a area of committee firstly, the transaction of sale or purchase may be transacted by a licensee and secondly, the same must be held in the notified market area. Similarly under rule 29(2) of the Rules the responsibility of paying the fee is of buyer of produce and if he is not licensee then of seller who can realize the same from buyer. Under this rule the market fee shall be levied as soon as the agricultural produce is bought or sold by a licensee. It is an admitted fact that the petitioner firm had purchased the wheat in question from Abohar, Goniana and Bathinda where the firm was/is not a licensee of the Market Committees of said notified market areas. Therefore, it cannot purchase the wheat of its own directly as section 6(3) of the Act does not permit. Due to this reason the petitioner firm had purchased wheat from licensee firms of respective Market

Committees. Therefore, under rule 29(2) of the Rules the market fee and RDF was to be deposited by the seller firms to the concerned committees as the buyer petitioner firm was not licensee there. The fee also attracted in the said areas immediately when the transaction of purchase or sale was held. As such the market fee and RDF was/is leviable/payable at Abohar, Goniana and Bathinda on the wheat in question and not in the area of Market Committee, Jagraon where the wheat was processed and not sold as such.

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I have also considered the findings given by the appellate authority that the petitioner firm was buyer and also a licensee, therefore, this firm was liable to pay market fee and RDF to the respondent- Market Committee at Jagraon. This observation of the appellate authority is not consonance with the provisions of Sections 6(3) and 23 of the Act and rule 29(2) of the Rules. Admittedly, the petitioner firm was not a licensee in the notified market area at Abohar, Goniana and Bathinda where the transactions of purchase or sale of wheat were held therefore, the responsibility of payment of market fee and RDF was of seller firm to the concerned committees. The transactions of sale and purchase were held in the said areas and not at Jagraon, therefore, the market fee and RDF was leviable and payable to the respective Market Committees by the licensee firms and not to the respondent-Committee at Jagraon. I have also considered the observation of appellate authority regarding the applicability of rule 29(7) of the Rules. I am not in agreement with this observation. The actual transactions of purchase and sale were held in this case as observed above and thus case is covered under Section 23 read with rule 29(1) of the Rules. Therefore, the deemed provisions of rule 29

(7) are not applicable in this case. Moreover, the bills issued by the seller firms indicate that the wheat purchased was dispatched at the risk and cost and on responsibility of the buyer after loading the produce. As such the respondents has wrongly levied the market fee and RDF upon the petitioner firm at Jagraon where the wheat processed and not sold as such.”

Section 23 of the Act is the charging section and reads as under:

“23. *levy of fees*:- A Committee shall, subject to such rules as may be made by the State Government in this behalf, levy on ad-valorem basis:-

- (i) fees on the agricultural produce bought or sold by a licensee in the notified market area at a rate not exceeding two rupees for every one hundred rupees; and
- (ii) also additional fees on the agricultural produce when sold by a producer to a licensee in the notified market area at a rate not exceeding one rupee for every one hundred rupees;

Provided that:-

- (a) no fee shall be leviable in respect of any transaction in which delivery of the agricultural produce bought or sold is not actually made; and
- (b) a fee shall be leviable only on the parties to a transaction in which delivery is actually made.”

Rule 29 (2) of the Punjab Agricultural Produce Markets (General) Rules, 1962 (for short, 'the Rules') fixes the liability of the person for payment of the market fee. It reads as under:

“29. Levy and collection of fees on the sale and purchase of agricultural produce

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(2) The responsibility of paying the fees prescribed under sub-rule (1) shall be of the buyer and if he is not a licensee then the seller who may realise the same from the buyer. Such fee shall be leviable as soon as an agricultural produce is bought or sold by a licensee.”

We have already considered an identical issue in Punjab Rice Mills v.

State of Punjab and others, (2006) 28 PHT 475 (P&H), wherein after referring to the provisions of the Act and the Rules, it was observed as under:

“Reference to the above provisions clearly shows that sale or purchase in the market area is a condition precedent for levy of market fee. The impugned notice and demand is based on the allegation that form was not submitted within time. The form is required to be submitted if a person claims exemption, from payment of market fees second time in case the same is already paid in one market area and is leviable again at a place where it is brought. In the present case, there is no allegation that sale or purchase has taken place in the market area in question. If that is so, no question of claiming exemption arises.”

In M/s Guranditta Mal Shauti Parkash, Rice Millers, Zira v. State of Punjab and another, (1993-2) P.L.R. 185 (P&H), this Court, while interpreting the provisions of Rule 29(2) of the Rules, held as under:

“From the aforesaid provisions, it is quite clear that liability to pay market fee is of the buyer (purchaser). If the buyer is a licensee in the same market area, it is he who is to deposit the market fee with the market committee concerned. If the buyer is not a licensee in the market area then it is the seller who is to deposit the amount of the market fee with that market committee and may realise the same amount of the market fee from the buyer. This would show that it is the legal duty and liability of the buyer to pay market fee in case of effecting the purchases of agricultural produce.”

The above judgment of this Court was upheld by Hon'ble the Supreme Court in State of Punjab and others v. Guranditta Mal Shauti Parkash and others, (2004) 5 SCC 791.

In the present case, a clear finding has been recorded by the revisional authority that on a perusal of the documents, it was evident that wheat was brought by respondent No.2 in the market area of Jagraon only for the purpose of processing and it was not bought or sold there.

Keeping in view the settled position of law, as referred to above, to which no contrary view has been cited by learned counsel for the petitioners, we

have no option but to hold that the order passed by the revisional authority is in conformity with law and accordingly, no ground is made out for interference by this Court.

It is, however, made clear that dismissal of the present writ petition will not preclude the petitioners from recovering the market fee and RDF from the licensees in the respective market areas, who had sold the wheat to respondent No.2 as they cannot be absolved of their statutory liability to pay the market fee on the transactions having entered into by them.

The writ petition is disposed of in the manner indicated above.

(Rajesh Bindal)
Judge

(Adarsh Kumar Goel)
Judge

October 28,2006
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